

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Midwest Independent Transmission System Operator, Inc.) Docket No. RT01-87-000

**COMMENTS OF THE
ILLINOIS COMMERCE COMMISSION**

I. INTRODUCTION

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211, and the Commission's January 26, 2001, Notice of Filing, the Illinois Commerce Commission ("ICC") hereby submits its Comments in the above captioned proceeding.

II. BACKGROUND

On January 16, 2001, the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") submitted its Order No. 2000 compliance filing ("Midwest ISO Filing").

III. ICC POSITION AND RECOMMENDATION

The Midwest ISO states in its filing that the Midwest ISO satisfies the Commission's Order 2000 RTO characteristics and functions. Midwest ISO filing at 1. The ICC, however, disagrees that the filing satisfies the following requirements of Order 2000:

- ?? Order 2000 requires that the RTO have the independent and exclusive right to make Section 205 filings that apply to the rates, terms, and conditions of transmission services over the facilities operated by the RTO. The Midwest ISO Agreement, however, reserves this right to the transmission-owning utilities.

- ?? Order 2000 requires the RTO to be of proper scope and configuration. The Midwest ISO, however, is of insufficient scope and configuration to obtain the Order 2000 standards concerning facilitation of competitive markets and internalization of parallel flows.
- ?? Order 2000 requires the RTO to have "operational control." The Midwest ISO Agreement, however, preserves the rights of transmission-owning utilities to perform the control area operator functions and does nothing to phase out this aspect of utility operational control.
- ?? Order 2000 requires the RTO to provide non-discriminatory service. The Midwest ISO Agreement, however, does not require bundled retail load (without the choice to be unbundled) to be under the Midwest ISO tariff until the end of a six-year transition period. That is discriminatory to Illinois load, all of which will be under the Midwest ISO tariff as of May 1, 2002.

Accordingly, the ICC requests that the Commission modify these provisions of the Midwest ISO Agreement and the Midwest ISO OATT to conform with Order 2000 as described below. Without such modifications, the Midwest ISO cannot be found to be Order 2000-compliant.

IV. DISCUSSION

A. The RTO Must Have Independent and Exclusive Authority Over Its Rates, Terms, and Conditions

In Order 2000-A, the Commission stated as follows:

[I]n the ISO type of situation, the RTO [must] have the independent and exclusive right to make Section 205 filings that apply to the rates, terms, and conditions of transmission services over the facilities operated by the RTO, but that transmission owners have the right to make Section 205 filings to determine the appropriate payments for the RTO's use of their facilities.

III FERC Stats & Regs ¶31,092 at 31,370. However, Article Two, Section 9, Paragraph C7 of the

Midwest ISO Agreement states as follows:

The pricing approach set forth in Appendix C to this Agreement for the "Transition Period," as defined in such Appendix C, shall not be changed except by unanimous approval of the Owners. After the Transition Period, the pricing approach set forth in such Appendix C may be changed by a three-fourths (3/4) affirmative vote of the Owners with each Owner having one vote.

The Midwest ISO Agreement violates this Order 2000 requirement in several ways.

The “pricing approach” referred to above involves rates, terms, and conditions which would be the subject of Section 205 filings. Therefore, during the transition period, the Midwest ISO will not have the “independent and exclusive right to make Section 205 filings that apply to the rates, terms, and conditions of transmission services over the facilities operated by the RTO” as required by Order 2000. Even after the transition period, the Midwest ISO will not have the “independent and exclusive right to make Section 205 filings that apply to the rates, terms, and conditions of transmission services over the facilities operated by the RTO” as required by Order 2000. The Commission must remove these restrictions on the Midwest ISO. Otherwise, the Midwest ISO cannot be independent of the transmission owners as required by Order 2000. Moreover, even if the Commission were to make some exceptions to its Order 2000 rule requirements in this regard during a transition period, it would be particularly egregious for the Midwest ISO not to have the independent and exclusive right to establish its own rates, terms, and conditions to be put in place at the conclusion of the transition period. Yet that is precisely what the Midwest ISO Agreement provides for in Article Two, Section 9, Paragraph C7 of the Midwest ISO Agreement.

In any event, the six year transition period established in the Midwest ISO Agreement is far too long. In this regard, the transition period proposed by the Alliance companies, which is scheduled to end on December 31, 2004, is much more reasonable. The ICC suggests that, should the Commission permit the Midwest ISO to retain a transition period, that such transition period be no longer than that which the Commission approves for the Alliance RTO.

B. The RTO Must be of Proper Scope and Configuration

Order 2000 requires that an RTO must serve a region of “sufficient scope and configuration to permit the Regional Transmission Organization to maintain reliability, effectively perform its required functions, and support efficient and non-discriminatory power markets.” 18 C.F.R. §35.34(j)(2). The Midwest ISO states in its filing that “[t]he Midwest ISO believes that under its current configuration [that is, with ComEd, Illinois Power, and Ameren included], the Midwest ISO satisfies this major aspect of Order No. 2000.” Midwest ISO filing at 34.

The ICC stated in its Midwest ISO Comments submitted March 16, 1998 that “the nine-owner ISO as filed on January 15, 1998, is of sufficient geographic scope to form a viable RTO.” ICC Comments at 3 (underlining added). However, the ICC also stated that such a geographic configuration is “far from ideal for an ISO in the Midwest Region.” Id. The same can be said about the Midwest ISO geographic scope and configuration on which the Midwest ISO is now basing its geographic sufficiency attestation. It is far from ideal.

Furthermore, the ICC does not agree with the Midwest ISO that the Midwest ISO, even with ComEd, Illinois Power, and Ameren in it, satisfies the scope and configuration requirement of Order 2000. In particular, the Midwest ISO scope and configuration fails to internalize loop flow over a large region and does not thwart the exercise of market power or facilitate the broadest possible energy trading area as required by Order 2000. III FERC Stats & Regs ¶31,092 at 31,082.

With respect to loop flow, the Specified Transmission Owners candidly admit that, “The current configuration of the Midwest ISO does not resolve all loop flow or competition issues in the Midwest.” Specified Transmission Owners’ Filing at 20 fn. 28. The Midwest ISO states that its size will permit it

to internalize most, but not all, of the “parallel path flows in its scheduling and pricing process within a region.” Midwest ISO Filing at 59.

With respect to facilitating the “broadest possible energy trading area,” the testimony of Dr. Peter Fox-Penner, who was, at the time (1998), testifying for the Midwest ISO companies, including Ameren, Illinois Power and ComEd, persuasively explained how inadequate scope and configuration in the RTO can hinder the development of seamless market development. Direct Testimony of Dr. Peter Fox-Penner in Dkts. ER98-1438 and EC98-24 at 28 (Feb. 6, 1998). Mr. Fox-Penner advocated the inclusion of substantially all of the MAIN and ECAR utilities in the same RTO. Id. at 4-5. “Efficient and non-discriminatory power markets” cannot optimally develop given the dis-aggregated and incomplete geographic configuration of the proposed Midwest ISO. An RTO covering substantially all of the geographic area currently separately covered by the Midwest ISO and the Alliance RTO would satisfy Order 2000’s scope and configuration requirements.

C. Utility Control Over the Control Area Operator Functions Should be Phased Out

The Midwest ISO Agreement permits the transmission-owning utilities to retain traditional control area operator functions. These include “scheduling and economic dispatch,” and “balanc[ing] load and generation in their control areas.” Midwest ISO Order at 40.

Order 2000 states that “we will not at this time require the RTO to operate what traditionally has been thought of as a single control area for its region.” III FERC Stats & Regs ¶31,089 at 31,091. However, Section 35.34(j)(3) of the rule adopted by Order 2000 requires that the RTO “must have operational authority for all transmission facilities under its control” and that if any operational functions are shared with entities other than the RTO, as is the case here where transmission-owning utilities will retain the traditional control area operator functions, the RTO “must ensure that this sharing of

operational authority will not adversely affect reliability or provide any market participant with an unfair competitive advantage.” 18 C.F.R. §35.34(j)(3). Order 2000 also requires that “the RTO must perform the control functions required to satisfy the minimum characteristics and functions in this Final Rule . . . in a non-discriminatory manner for all market participants” and that “[t]he system of operational control chosen must ensure reliable operation of the grid and non-discriminatory access to the grid by all market participants.” III FERC Stats & Regs ¶31,089 at 31,091.

The Midwest ISO Agreement’s sharing of operating functions that permits transmission-owning utilities to retain control of the control area operator functions does not satisfy Order 2000’s requirements for RTO operational authority. In particular, it does not allow the RTO to “ensure reliable operation of the grid and non-discriminatory access to the grid by all market participants.” Dispersed control area operation unnecessarily complicates RTO real-time balancing and congestion management. With respect to congestion management, the Midwest ISO admits there is no empirical data to indicate how locational marginal pricing would work in a decentralized dispatched region. Midwest ISO Filing at 55. With respect to real-time balancing, the Midwest ISO admits that, because it will not centrally dispatch, “it has been a challenge for the Midwest ISO to develop a mechanism for determining the market clearing price.” *Id.* at 66. Utility retention of control area operator functions hinders the RTO’s operating authority and permits utilities to maintain barriers to non-discriminatory transmission access.

The ICC recognizes that the immediate consolidation and centralization of all control area operator functions in the RTO may have negative cost consequences. Nevertheless, given the benefits to be obtained, it is reasonable for the Midwest ISO to explore alternatives, as suggested in Order 2000, such as a hierarchical control structure where existing control areas are made subject to RTO direction. III FERC Stats & Regs ¶31,089 at 31,091. Similarly, the Midwest ISO could phase-in the

assumption of control area operator functions over time so as to reach an end-state of control area consolidation by a date certain.

Finally, as the ICC originally requested in its March 16, 1998 Comments to FERC in the Midwest ISO dockets, even if the Commission finds that control area operator functions may remain with the transmission-owning utilities, the Commission should make clear that the Midwest ISO has the authority, upon making appropriate regulatory filings, to assume the control area operator functions from the utilities if and when it finds that step necessary to accomplish its responsibilities under Order 2000. See, ICC Midwest ISO Comments at 31.

D. All Load Should be Under the Tariff

In Order 2000, the Commission stated that, “an RTO will not be successful unless all market participants believe that the RTO will operate the grid and provide transmission service to all grid users on a nondiscriminatory basis.” III FERC Stats & Regs ¶31,089 at 31,065 (underlining added). However, the Midwest ISO Agreement preserves discrimination, at least through the transition period, by not putting all load under the Midwest ISO OATT. In particular, Section II.A.2.a of Appendix C of the Midwest ISO Agreement specifically exempts providers of bundled retail load that does not have “the right to choose a different supplier under a state retail access program or legislation” from taking transmission service under the Midwest ISO OATT to supply that bundled load. In fact, Section II.A.2.c of Appendix C of the Midwest ISO Agreement outright prohibits most transmission owners serving bundled retail load without the right to choose from even electing to put that load under the Midwest ISO OATT. These provisions are clearly discriminatory and in violation of Order 2000.

This feature of the Midwest ISO Agreement is of particular concern to Illinois. Under Illinois law, all commercial and industrial load received the right to choose an alternative supplier on or before

January 1, 2001. Indeed, all retail load will acquire the right to choose an alternative supplier by May 1, 2002. Therefore, all Illinois retail load will be under the Midwest ISO OATT in less than six months after Midwest ISO start-up. However, bundled retail load in other Midwest ISO states may not receive the right to choose an alternative supplier prior to the end of the six-year Midwest ISO transition period, and so, would continue to face different conditions for another five and one half years as compared with the Illinois retail load which will all be served under the Midwest ISO OATT. Such an outcome is discriminatory, violates Order 2000, and should not be permitted by the Commission.

V. CONCLUSION

WHEREFORE, for each and all of the foregoing reasons, the Illinois Commerce Commission respectfully requests that the Commission modify the provisions of the Midwest ISO Agreement and the Midwest ISO OATT as described above; and for any and all other appropriate relief.

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Respectfully submitted,

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